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Attorneys for Said Forouzan Rad, R. Phillip Nourafchan, Forouzan, Inc., and RPN, LLC

E-filed on: July 1, 2010

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Attorneys for R&S St. Rose, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

R&S ST. ROSE, LLC,

Alleged Debtor.

Case No. BK-S-10-18827-MKN
Involuntary Chapter 7

FOURTH SUPPLEMENTAL
DECLARATION OF RICHARD F.
HOLLEY, ESQ. IN SUPPORT OF
MOTION TO DISMISS INVOLUNTARY
PETITION

Date of Hearing: June 23, 2010
Time of Hearing: 9:30 a.m.
Place: Courtroom No. 2, Third Floor
Foley Federal Building
300 Las Vegas Blvd., S.
Las Vegas, NV 89101

Judge: Hon. Mike K. Nakagawa

I, RICHARD F. HOLLEY, hereby declare under penalty of perjury as follows:

1. I am a shareholder in the law firm of Santoro, Driggs, Walch, Kearney, Holley & Thompson ("Santoro Firm"). I am admitted to practice law before this Court.

2. The Santoro Firm was at all relevant times counsel of record for Saiid Forouzan Rad ("Rad"), Forouzan, Inc. ("Forouzan Inc."), Phillip Nourafchan ("Nourafchan"), RPN, LLC, a Nevada limited liability company ("RPN"), and R&S Investment Group, LLC ("R&S Investment Group"), in case number A574852 pending in Department XI in the Eighth Judicial District Court, Clark County, Nevada and case number A594512 originally filed in Department XIII in the Eighth Judicial District Court, Clark County, Nevada and subsequently consolidated with case number A574852 (collectively the "State Court Actions"). I was lead counsel in the State Court Actions on behalf of Rad, Forouzan Inc., Nourafchan, RPN and R&S Investment.

3. Forouzan Inc. and RPN are the sole members and managers of R&S St. Rose. Rad is an owner of Forouzan Inc., and Nourafchan is the sole member and manager of RPN.

4. I have personal knowledge of the matters set forth in this fourth supplemental declaration except as to those matters based upon information and belief. As to the matters based upon information and belief, I believe those statements to be true and correct.

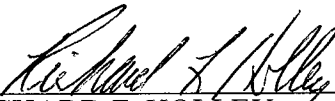
5. I make this fourth supplemental declaration in support of the Motion to Dismiss the Involuntary Petition commenced by Branch Banking and Trust Company (BB&T") against R&S St. Rose, LLC ("R&S St. Rose"). This declaration supplements the Declaration of Richard F. Holley, Esq., in Support of the Motion to Dismiss Involuntary Petition, filed May 25, 2010 [Dkt. No. 11], the Supplemental Declaration of Richard F. Holley, Esq., in Support Reply in Support of Motion to Dismiss Involuntary Petition filed June 16, 2010 [Dkt. No. 22], the Second Supplemental Declaration of Richard F. Holley, Esq., in Support of Motion to Dismiss [Dkt. No. 24], and the Third Supplemental Declaration of Richard F. Holley, Esq., in Support of Motion to Dismiss [Dkt. No. 27].

6. Attached is a filed-stamped copy of the Notice of Entry of Order regarding the *Order Granting, in Part, and Denying, in Part: (1) BB&T's Motion to Voluntarily Dismiss its Remaining Claims to Certify Order as Final and Motion to Stay Foreclosure Pending Appeal on Order Shortening Time; and (2) Plaintiffs' Motion to Voluntarily Dismiss the Remaining Claims Against all Defendants and to Enter Judgment in Accordance with this Court's Order of April 21, 2010* which Order was signed by Judge Gonzalez and entered in the State Court Action on

1 June 24, 2010, and Notice of Entry of which was filed in the State Court Action on June 28,
2 2010. The filed Notice of Entry of Order is attached as continuing **Exhibit "27."**

3 I declare under penalty of perjury under the laws of the United States that the foregoing is
4 true and correct.

5 Dated this 1st day of July, 2010.

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7 
8 RICHARD F. HOLLEY
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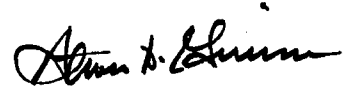
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SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

SDW

EXHIBIT “27”

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CLERK OF THE COURT

1 **NOE**

2 DAVID J. MERRILL

3 Nevada Bar No. 6060

4 DAVID J. MERRILL, P.C.

5 2850 West Horizon Ridge Parkway, Suite 200

6 Henderson, Nevada 89052

7 Telephone: (702) 566-1935

8 Facsimile: (702) 924-0787

9 E-mail: david@djmerrillpc.com

10 Attorney for R & S ST. ROSE LENDERS, LLC

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 ROBERT E. MURDOCK and ECKLEY M. KEACH,

14 Plaintiffs,

15 vs.

16 SAIID FOROUZAN RAD, an individual; R. PHILLIP NOURAFCHAN, an individual; FOROUZAN, INC., a Nevada corporation; RPN LLC, a Nevada limited liability company; R & S ST. ROSE LLC, a Nevada limited liability company; R & S ST. ROSE LENDERS, LLC, a Nevada limited liability company; COLONIAL BANCGROUP INC.; R & S INVESTMENT GROUP LLC, a Nevada limited liability company; and DOES I through X, inclusive,

17 Defendants.

18 AND ALL RELATED CLAIMS AND ACTIONS

Master Case No.: 08A574852
Consolidated with: 09A594512
Dept. No.: XI

23 **NOTICE OF ENTRY OF ORDER**

24 TAKE NOTICE that on the 24th day of June, 2010, the Court entered an Order Granting,
25 in part, and denying in part: (1) BB&T's Motion to Voluntarily Dismiss Its Remaining Claims to
26 Certify Order as Final and Motion to Stay Foreclosure Pending Appeal on Order Shortening
27 Time; and (2) Plaintiffs' Motion to Voluntarily Dismiss the Remaining Claims against all
28

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2850 WEST HORIZON RIDGE PARKWAY, SUITE 200
HENDERSON, NEVADA 89052

1 Defendants and to Enter Judgment in Accordance with this Court's Order of April 21, 2010. A
2 copy of said Order is attached hereto.

3
4 DATED this 28th day of June 2010.

5 DAVID J. MERRILL, P.C.

6
7 By:



8 DAVID J. MERRILL
2850 West Horizon Ridge Parkway, Suite 200
9 Henderson, Nevada 89052
(702) 566-1935

10 Attorney for R & S ST. ROSE LENDERS, LLC
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DAVID J. MERRILL, P.C.
2850 WEST HORIZON RIDGE PARKWAY, SUITE 200
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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June 2010, a copy of Order Granting, in part, and denying in part: (1) BB&T's Motion to Voluntarily Dismiss Its Remaining Claims to Certify Order as Final and Motion to Stay Foreclosure Pending Appeal on Order Shortening Time; and (2) Plaintiffs' Motion to Voluntarily Dismiss the Remaining Claims against all Defendants and to Enter Judgment in Accordance with this Court's Order of April 21, 2010 was served by depositing a true and correct copy in the United States Mail, first class postage prepaid, and addressed to the following at their last known addresses:

Eckley M. Keach, Esq.
Eckley M. Keach, Chtd.
520 South Fourth Street
Las Vegas, Nevada 89101

Robert E. Murdock, Esq.
Murdock & Associates, Chtd.
520 South Fourth Street
Las Vegas, Nevada 89101

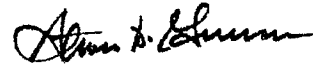
Richard F. Holley, Esq.
Santoro, Driggs, Walch, Kearney, Holley &
Thompson
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Julie L. Sanpei, Esq.
Bailus Cook & Kelesis, Ltd.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Douglas D. Gerrard
Gerrard Cox & Larsen
2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074

/s/ Catalina Heresi
An employee of David J. Merrill, P.C.

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CLERK OF THE COURT

ORDER

DAVID J. MERRILL
Nevada Bar No. 6060
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Henderson, Nevada 89052
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Facsimile: (702) 924-0787
E-mail: david@djmerrillpc.com
Attorney for R & S ST. ROSE LENDERS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT E. MURDOCK and ECKLEY M.)
KEACH,)

Plaintiffs,)

vs.)

SAHD FOROUZAN RAD, an individual; R.)
PHILLIP NOURAFCHAN, an individual;)
FOROUZAN, INC., a Nevada corporation;)
RPN LLC, a Nevada limited liability)
company; R & S ST. ROSE LLC, a Nevada)
limited liability company; R & S ST. ROSE)
LENDERS, LLC, a Nevada limited liability)
company; COLONIAL BANCGROUP INC.;)
R & S INVESTMENT GROUP LLC, a)
Nevada limited liability company; and DOES I)
through X, inclusive,)

Defendants.)

AND ALL RELATED CLAIMS AND)
ACTIONS)

Master Case No.: 08A574852
Consolidated with: 09A594512
Dept. No.: XI

ORDER GRANTING, IN PART, AND DENYING, IN PART:
(1) BB&T'S MOTION TO VOLUNTARILY DISMISS ITS
REMAINING CLAIMS TO CERTIFY ORDER AS FINAL
AND MOTION TO STAY FORECLOSURE PENDING
APPEAL ON ORDER SHORTENING TIME; AND (2)
PLAINTIFFS' MOTION TO VOLUNTARILY DISMISS THE
REMAINING CLAIMS AGAINST ALL DEFENDANTS AND
TO ENTER JUDGMENT IN ACCORDANCE WITH THIS
COURT'S ORDER OF APRIL 21, 2010

Date of Hearing: May 4, 2010
Time of Hearing: 9:00 a.m.

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HENDERSON, NEVADA 89052

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HENDERSON, NEVADA 89052

Two motions---(1) B&T's Motion to Voluntarily Dismiss its Remaining Claims to Certify Order as Final and Motion to Stay Foreclosure Pending Appeal on Order Shortening Time ("BB&T's Motion"); and (2) Plaintiffs' Motion to Voluntarily Dismiss the Remaining Claims Against All Defendants and to Enter Judgment in Accordance with this Court's Order of April 21, 2010 ("Plaintiffs' Motion")---came before this Court on the 4th day of May 2010. Plaintiff Robert E. Murdock appeared on his own behalf and on behalf of Plaintiff Eckley M. Keach. David J. Merrill of David J. Merrill, P.C. appeared on behalf of Defendant R & S St. Rose Lenders, LLC ("St. Rose Lenders"). Julie Sanpei of Bailus Cook & Kelesis, Ltd. appeared on behalf of R & S St. Rose, LLC. Aaron Shumway of Gerrard Cox & Larsen appeared on behalf of BB&T Corporation. Ogonna Atamoh of Santoro, Driggs, Walch, Kearney, Holley & Thompson appeared on behalf of Said Forouzan Rad, R. Phillip Nourafchan, Forouzan, Inc., RPN LLC, and R & S Investment Group, LLC. The Court having read and reviewed BB&T's Motion and Plaintiffs' Motion, considered the arguments of the parties, and good cause appearing therefore:

IT IS HEREBY ORDERED that BB&T's Motion is GRANTED in part and DENIED in part. Specifically, BB&T's motion to dismiss its remaining claims is GRANTED;

IT IS FURTHER ORDERED that BB&T's Fifth Cause of Action for Fraudulent Misrepresentation and Sixth Cause of Action for Civil Conspiracy shall be and hereby are DISMISSED;

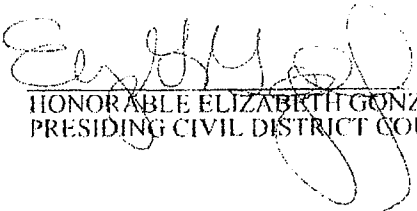
IT IS FURTHER ORDERED that the remainder of BB&T's Motion is DENIED without prejudice;

IT IS FURTHER ORDERED that Plaintiffs' Motion is GRANTED in part and DENIED in part. Specifically, BB&T's motion to voluntarily dismiss its remaining claims against all Defendants is GRANTED;

IT IS FURTHER ORDERED that all claims asserted by Plaintiffs against all Defendants--except for the breach of contract claim asserted against R & S St. Rose Lenders, LLC on which the Court has entered an order granting Plaintiffs' motion for summary judgment---shall be and hereby are DISMISSED;

1 IT IS FURTHER ORDERED that the remainder of Plaintiffs' Motion is DENIED
2 without prejudice.

3 DATED this 22nd day of June 2010.

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5 
6 HONORABLE ELIZABETH GONZALEZ
7 PRESIDING CIVIL DISTRICT COURT JUDGE

8 Submitted by:

9 DAVID J. MERRILL, P.C.

10
11 By: 

12 DAVID J. MERRILL
13 2850 West Horizon Ridge Parkway, Suite 200
14 Henderson, Nevada 89052
15 (702) 566-1935

16 Attorney for R & S ST. ROSE LENDERS, LLC
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DAVID J. MERRILL, P.C.
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HENDERSON, NEVADA 89052

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Santoro, Driggs, Walch, Kearney, Holley & Thompson, and that on the 1st day of July, 2010, I caused to be served a true and correct copy of FOURTH SUPPLEMENTAL DECLARATION OF RICHARD F. HOLLEY, ESQ. IN SUPPORT OF MOTION TO DISMISS INVOLUNTARY PETITION in the following manner:

☒ (ELECTRONIC SERVICE) Under Administrative Order 02-1 (Rev. 8-31-04) of the United States Bankruptcy Court for the District of Nevada, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities.

☐ (UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Mail, first class postage prepaid, at Las Vegas, Nevada, to the parties listed on the attached service list, at their last known mailing addresses, on the date above written.

☐ (OVERNIGHT COURIER) By depositing a true and correct copy of the above-referenced document for overnight delivery via Federal Express, at a collection facility maintained for such purpose, addressed to the parties on the attached service list, at their last known delivery address, on the date above written.

☐ (FACSIMILE) That I served a true and correct copy of the above-referenced document via facsimile, to the facsimile numbers indicated, to those persons listed on the attached service list, on the date above written.



An employee of Santoro, Driggs, Walch,
Kearney, Holley & Thompson